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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

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LOREN R. SMITH,
Petitioner,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM, MARIO LUCCHESI, Officially and Individually, and PATRICIA M. CAVANAUGH, Officially and Individually,
Respondents.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

****

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA A. HAMILTON
Deputy Attorney General for Litigation

TONI HUNTER
Chief, General Litigation Division

JANICE S. MOSS
Assistant Attorney General
General Litigation Division
P. O. Box 12548
Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0067 FAX

COUNSEL FOR
RESPONDENTS

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Texas statute determining residency classification for tuition purposes violates the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

2. Whether the Texas reclassification regulation regarding residency of students for tuition purposes violates the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

LIST OF PARTIES

Loren R. Smith - Petitioner, Pro Se.

Board of Regents of the University of Houston System - Respondent.

Mario C. Lucchesi, in his official capacity - Respondent.

Patricia M. Cavanaugh, in her official capacity - Respondent.

Janice S. Moss, Assistant Attorney General of the State of Texas - Counsel for Respondents.

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NO. 94-1603

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IN THE
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LOREN R. SMITH,
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BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM,
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Respondents.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

****

TO THE HONORABLE SUPREME COURT:

The Respondents, Board of Regents of University of Houston System, Mario Lucchesi, Officially and Individually, and Patricia M. Cavanaugh, Officially and Individually, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, Loren Smith.

CONSTITUTIONAL PROVISIONS AND STATUTES

The questions presented require application of the following constitutional and statutory provisions: *United States Constitution, Amendment XIV, Section 1; Texas Education Code Annotated §54.052(a)(1)(2)*(Vernon 1987); *Texas Education Code Annotated. §54.052(f)* (Vernon 1987); *Texas*

Education Code Annotated §54.053(Vernon 1987); *Texas Education Code Annotated §54.054* (Vernon 1987); *19 Texas Administrative Code §21.23* (West 1994).

STATEMENT OF THE CASE

A. INTRODUCTION

Many residents of the State of Texas attend Texas universities. Likewise, other nonresident students of Texas universities merely enter the State, as residents of another state, for the purpose of attending a university of the State of Texas. Petitioner, who was a nonresident when he moved to Texas to attend the University of Houston Law Center, challenges the constitutionality of the Texas statutes and regulations regarding the reclassification of nonresident students for tuition purposes on the grounds that the statutes and regulations violate the Due Process and Equal Protection Clauses of the United States Constitution. Petitioner challenges portions of the statute and regulations through which he sought and failed to meet the criteria for status as a resident for tuition purposes. The statute and regulations clearly incorporate many ways in which a nonresident student may establish his status as a bonafide resident of the State of Texas. The question before this Court is whether the Texas statute and regulations which allow the colleges and universities of Texas to charge a higher tuition rate to non-residents of Texas, are constitutional. Respondents submit that there is no constitutional violation in either the statute or the regulations.

B. FACTUAL BACKGROUND

Petitioner Loren Smith moved to Houston, Texas from Stow, Ohio, in August 1987 for the specific and exclusive purpose of attending the University of Houston Law Center, in which he enrolled two weeks after his arrival in Texas. Having failed to establish a bona fide Texas residency for tuition purposes, under the applicable statute and the rules of the Texas Higher Education Coordinating

Board (which is not a defendant in this case, nor are any of its officials), Smith was charged the higher non-resident tuition.

The facts recited by Petitioner in "A. Factual Background" in the "Statement of the Case" portion of his brief, Paragraphs two and three (pages 5-7 of Petitioner's Petition for Writ of Certiorari) are as stipulated by the parties and approved by the trial court on November 15, 1992. The remaining paragraphs contain statements of fact not in the Petitioner's Brief before the Court of Appeals, which statements all relate to (1) the application process in which Petitioner applied for resident status, (2) the subjective belief of certain individuals regarding Petitioner's intent to reside in Texas, and (3) adherence by University officials to the rules and regulations regarding residency.

C. DISPOSITION AND PROCEEDINGS BELOW

Smith sued the University of Houston System, its Board of Regents, and two of its officials, in the 125th Judicial District Court of Harris County, Texas, claiming that the state's residency distinction for state university tuition and its criteria for reclassification as a resident student violated the due process and equal protection guarantees of the United States and Texas Constitutions, impermissibly burdened freedom of travel, and breached his contract with the university. The Court signed a take-nothing judgment in favor of Respondents on October 13, 1992, and the First Court of Appeals for the State of Texas affirmed. On appeal, Smith also assigned error to the District Court's and Court of Appeals' conclusion that sovereign immunity protects the University and its officials.

The Supreme Court of Texas denied Petitioner's Application for Writ of Error on October 6, 1994, and overruled Petitioner's Motion for Rehearing on November

22, 1994. Smith's suit fails on the merits and fails to overcome the defendants' governmental immunity.

REASONS FOR DENYING THE WRIT

ARGUMENT AND AUTHORITIES

I. INTRODUCTION

The questions presented to this court challenge the constitutionality of the Texas statutes pursuant to which the University charged Petitioner nonresident tuition fees instead of resident student fees, since Petitioner moved to Texas approximately two weeks before he enrolled in law school at the University, admitted that he came to Texas to go to law school, and thereafter failed to establish through any of the criteria available through the statute or regulations to prove that he had established residency for tuition purposes.

Petitioner's presentation of the questions narrowly focuses on certain portions of the statute. He chooses to challenge the one-year durational residency requirement and the refusal to count time spent in the state as a full-time university student toward this requirement, in light of clearly established case law that permits states to establish a one-year durational residency requirement. *Vlandis v. Kline,* 412 U. S. 441, 452-53, 93 S. Ct. 2230, 2236-37, 37 L.Ed.2d 63 (1973).

It is noteworthy that although Petitioner narrowly frames the questions for review as the issues of the one-year durational residency requirement and the refusal to count time spent in the state as a full-time university student toward this requirement, the challenged criteria at issue do not represent an exclusive list of the criteria through which Petitioner would be eligible to be declared a resident for tuition purposes, nor does such a presentation of the questions acknowledge that the flexibility of the statute allows for reclassification of a non-resident in many more

ways than what Petitioner challenges.[1] Other factors exist within the statute which would have permitted the University's classification of him as a resident for tuition purposes, had he met those factors. The statute and reclassification regulation are flexible and actually comply with the standards and parameters this Court has established for establishing residency for tuition purposes.

II. THIS COURT SHOULD DENY CERTIORARI BECAUSE THIS COURT HAS ESTABLISHED THAT THE STATES MAY ESTABLISH REASONABLE CRITERIA THROUGH WHICH THEY MAY ASCERTAIN RESIDENCY OF STUDENTS FOR TUITION PURPOSES, AND THE STATUTE AND REGULATIONS AT ISSUE COMPORT WITH THE STANDARDS ESTABLISHED IN *VLANDIS V. KLINE* AND SUBSEQUENT CASES.

The statute and regulations meet the test that this Court has established as reasonable criteria for establishing residency in meeting a legitimate state interest. The Supreme Court has clearly held that a state has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own residents to attend such institutions on a preferential tuition basis. *Vlandis, supra*, 412 U.S. at 452-453, 93 S.Ct. at 2236-2237. In *Vlandis v. Kline*, 412 U.S. 441 (1973), the Court opined:

> [A] State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institution on a preferential tuition basis.

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[1] For example, the full-time employment criterion is only one of several factors which the University may consider when deciding whether or not a student is a resident or in fact has come to the state primarily to go to school, as Petitioner did.

Vlandis v. Kline, 412 U.S. 441, 452-458 (1973). Additionally, the Court stated that a state shall not be denied "the right to impose on a student...a reasonable durational residency requirement" so as to fulfill its interest. *Id.* at 452, 2236.

The Texas statute complies with the ruling of *Vlandis,* offering a reasonable durational residency requirement and "reasonable criteria for in-state status" *Vlandis,* 93 S.Ct. at 2237, by which a nonresident student may be reclassified for purposes of tuition. The statute offers several nonexclusive facts and criteria which would support reclassification: residence or full-time employment prior to enrolling as a student; withdrawal from school to establish residence in the state while gainfully employed for a period of 12 months; a nonconclusive presumption policy; other material business or personal facts unequivocally indicative of a fixed intention to reside permanently in the state, including, but not limited to, the length of residence and full-time employment prior to enrolling in the institution, the fact of full-time employment and the nature of such employment while a student, purchase of a homestead with substantial down payment, or dependency upon a parent or guardian who has resided in Texas for at least 12 months immediately preceding the student's enrollment. Petitioner fails to point out that the criteria which he challenges are **nonexclusive factors**, and, in fact, that the criteria in the reclassification regulation comprise a nonexclusive list. The statute specifically provides that

> The presumption of 'nonresident' is not a conclusive presumption, however, and other facts may be considered to determine if the presumption has been overcome. Material to this determination are business or personal facts or actions unequivocally indicative of a fixed intention to reside permanently in the state.

19 Tex. Admin. Code §21.23 (West 1994)

The reason for classifying students for tuition purposes is not to impede travel, but rather to preserve and protect the "quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis." *Vlandis*, 93 S.Ct., at 2237. Such reasonable criteria as the State of Texas has established for determining in-state status is to make "virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates" afforded to bona fide residents. *Id.* Thus, institutions are able to meet the objectives and purposes of maintaining the quality of Texas' publicly financed educational institutions of higher learning, and offering educational opportunities to its own bona fide residents (on a preferential tuition basis).

III. THIS COURT SHOULD DENY CERTIORARI BECAUSE THE STATUTE, THE RECLASSIFICATION REGULATION, THE ONE-YEAR DURATIONAL RESIDENCY REQUIREMENT TO BE ELIGIBLE FOR RECLASSIFICATION TO PAY THE RESIDENT RATE FOR UNIVERSITY TUITION AND RELATED FACTS UNDER THE STATUTE WHICH MAY BE TAKEN INTO CONSIDERATION FOR RESIDENCY PURPOSES, DO NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Fourteenth Amendment of the United States Constitution provides that no state shall deprive any persons of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1. Petitioner argues that the state's policy of reclassification of non-resident students in public institutions of higher education, for tuition purposes, violates the Due Process Clause. In support of this contention, Petitioner relies on *Vlandis v. Kline*, *supra*, wherein a

Connecticut residence reclassification statute was found to contravene the Due Process Clause, under the "irrebuttable presumption" doctrine. *Id.* 412 U.S. at 452, 93 S.Ct. at 2236. However, as discussed above, the statute considered in *Vlandis* is distinguishable from that in the case at bar.

In addition, the Court of Appeals has cited analogous cases[2] to show that the refusal to reclassify Petitioner was not arbitrary and capricious. Petitioner had obtained a Texas driver's license, registered his car in Texas, rented an apartment in Texas, was registered to vote in Texas, worked in summer breaks in Texas, and further claimed that he planned to stay in Texas. The Court of Appeals found that the evidence was not such to show that the decision not to reclassify him as a resident was arbitrary and capricious, since many students who have no intention of remaining in Texas after graduation also do these same things. Court of Appeals Opinion at 7.

In *Vlandis*, the offending enactment was invalidated because the presumption it created was not only irrebuttable, but also permanent for the entire period that the non-resident student attended the educational institution. *Id.* The policy at issue in this case, on the other hand, creates a rebuttable presumption that is in no way permanent. *19 Tex.Admin. Code § 21.23.* The state's policy allows future reclassification of non-residents after they have overcome the presumption. *Weaver v. Kelton,* 357 F.Supp. 1106, 1110-1111 (E.D. Tex. 1973). As a result, under the reasoning in *Vlandis*, the state's policy does not create an impermissible irrebuttable presumption in derogation of the Due Process Clause.

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[2] *Spielberg v. Board of Regents, University of Michigan,* 601 F. Supp. 994, 999-1001 (E.D. Mich. 1985); *Black v. Sullivan,* 561 F.Supp. 1050, 1064-65 (D. Maine 1983); *Michelson v. Cox,* 476 F.Supp. 1315, 1318-20 (S.D. Iowa 1979);

The Supreme Court has ruled that, under federal due process, where fundamental interests are not affected, a statute will be upheld if it merely bears a rational relationship to a legitimate state interest. *See, Ferguson v. Skrupa*, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963). The *Vlandis* Court stated that

> [I]t is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Rather, standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to the in-state rates.

Vlandis, 93 S.Ct. at 2236. As the Court of Appeals noted in its opinion, the reclassification rules in Texas do not permanently "freeze" a student in a nonresident status based on the student's classification at the time of application to the University, and a student may obtain reclassification in any number of ways. Opinion of Court of Appeals, p. 5. In addition, Petitioner was given the opportunity to present evidence at the time of his applications for reclassification to show that he was a bona fide resident entitled to the in-state rates, and therefore was not denied due process. Petitioner's Brief, at 9-10. As in *Black v. Sullivan*, 561 F.Supp. 1050, 1064-65 (D.Maine 1983), cited by the Court of Appeals, Opinion, at 6, Petitioner was given a fair opportunity to demonstrate entitlement to reclassification, and the rules on their face do not exclude any class of persons from reclassification. For these reasons, Respondents have shown that the rules and regulations do not create an irrebuttable presumption.

This Court has additionally limited the "irrebuttable presumption" doctrine of *Vlandis*. *Brennan v. Stewart*, 834 F.2d 1248, 1258 (5th Cir. 1988). The Supreme Court has addressed the issue of whether a statute is unconstitutional when it runs the risk of being overinclusive or underinclusive in its application to all individuals, and where it might provide a harsh result to certain individuals. In reviewing a statute enacted where there is legitimate concern to prevent abuse, the applicable constitutional standard requires answering the question whether the legislature could rationally have concluded both that a particular limitation or qualification would protect against the occurrence of the abuse, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule. *Weinberger v. Salfi*, 422 U.S. 749, 777, 95 S.Ct. 2457, 2473, 45 L.Ed.2d 522 (1975). Such is the situation in the instant case. The fact that Petitioner failed to comply with or meet the reasonable regulations of the statute or to bring forward other facts which unequivocally demonstrated his fixed intention to reside permanently in the state does not in and of itself necessitate a finding that his fundamental rights were violated or that there is not a substantial state interest.

In determining the reasonableness of the criteria, the question is not whether a "statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute. Such a rule would ban all prophylactic provisions." *Weinberger v. Salfi*, 422 U.S. 749, 777, 95 S.Ct. 2457, 2472, 45 L.Ed.2d 522 (1975). This Court held in *Weinberger* that when the government applies a prophylactic rule or limitation regarding a duration-of-relationship requirement in an effort to support the legitimate state interest of discouraging sham relationships, the possibility that the rule may be overinclusive or underinclusive does not

necessitate that the rule is unconstitutional. *Id.*, 95 S.Ct. at 2472.

IV. THIS COURT SHOULD DENY CERTIORARI BECAUSE THE STATUTE, THE RECLASSIFICATION REGULATION, THE ONE-YEAR DURATIONAL RESIDENCY REQUIREMENT TO BE ELIGIBLE FOR RECLASSIFICATION TO PAY THE RESIDENT RATE FOR UNIVERSITY TUITION AND RELATED FACTS UNDER THE STATUTE WHICH MAY BE TAKEN INTO CONSIDERATION FOR RESIDENCY PURPOSES, DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

A. The State's reclassification policy passes even minimum scrutiny.

The statute and regulation at issue establishing a bona fide residence requirement do not differentiate suspect classes, nor impinge on fundamental or important rights. *Martinez v. Bynum*, 461 U.S. 321, 328, 103 S.Ct. 1838, 1842, 75 L.Ed.2d 879 (1983). Thus, the appropriate standard of review is whether the challenged statute and regulation have a rational basis, that is, whether they are rationally related to a legitimate state purpose. *Id.* The Court of Appeals noted that the "critical issue this Court must decide is whether the reclassification statute, and the criteria it considers to determine residency for tuition purposes, sets up a test to determine bona fide residency." Court of Appeals Opinion at 10. Respondents submit that the statutory criteria to determine the residency of a student for tuition purposes bear a rational relation to the legitimate legislative goal of insuring that the State protects and preserves the "quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis." *Vlandis*, 93 S.Ct. at 2237; *see also*

Weinberger v. Salfi, 422 U.S. 749, 772, 95 S.Ct. 2457, 2470, 45 L.Ed.2d 522 (1975).

While courts have invalidated as unconstitutional provisions which have the effect of denying an out-of-state student the right to show that he became a resident of the state after entering a university[3], they have generally upheld the constitutionality of provisions designed to establish a student's bona fide intent to become a resident. *Martinez v. Bynum*, 461 U.S. 321, 325, 103 S.Ct. 1838, 1841 (1983). Rebuttable presumptions of non-residency are constitutional. *Clarke v. Redeker*, 406 F.2d 883 (8th Cir. 1969), *cert. denied*, 396 U.S. 862 (1969). In fact, the Supreme Court has refused to strike down statutes requiring one year of residence as a condition to lower tuition at state institutions of higher education. *Memorial Hospital v. Maricopa County, et al.*, 415 U.S. 238, 258-259, 94 S.Ct. 1076, 1082, 39 L.Ed.2d 206 (1974).

More recently, the Court has noted that it has consistently affirmed requirements that a non-resident student be domiciled primarily as a permanent resident, and not as a student, for one year as an element of bona fide residency. *Martinez, supra*, 461 U.S. at 327 n.6, 103 S.Ct. at 1842 n.6. The Supreme Court stated that a "bona fide residence requirement, appropriately defined and uniformly applied, furthers [a] substantial state interest ... and does not burden or penalize the constitutional right of interstate travel." *Id.* at 328-329, 1842. Further, the Court defined a bona fide residence requirement as one that "simply requires that the person *does* establish residence" before demanding the benefits of such status. *Id.* at 329, 1843. The Court stated that the requirement of a bona fide residence requirement does not violate the Equal Protection Clause of the Fourteenth Amendment. *Id.*, at 328, 1842.

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[3] *Vlandis, supra*, 412 U.S. at 452, 93 S.Ct. at 2236.

When reviewing a claim of residence, the issue is essentially one of domicile. *Vlandis, supra*, 412 U.S. at 454, 93 S.Ct. at 2237. Generally, an individual's domicile is his true, fixed, and permanent home and place of habitation. *Id.* Thus, it follows that a state policy creating a rebuttable presumption of non-residency, for tuition purposes, which conditions reclassification upon one year of in-state domicile, not primarily as a student, as an element of a bona fide intent to establish permanent residency, and which is appropriately defined and uniformly applied, is constitutional under the above line of authority. The state policy at issue is faithful to this line. *19 Tex.Admin. Code § 21.23* (West Oct. 1, 1992).

Petitioner's challenge of Texas' "refusal to count time spent in state for the primary purpose of attending a university towards the period" is not meritorious. Texas is entitled to establish a test whereby it can best determine whether a student, who admits he has moved to the state for the primary purpose of gaining an education (*Petition for Writ of Certiorari, p. 39)*, has taken actions which unequivocally indicate an intention to reside permanently in the state. Full time employment is merely one way of demonstrating this intent.

While this individual prong of Texas' list of exceptions to gain residency may seem unfair to a student who seeks to enroll for a full course load each semester, the regulation does not violate the Equal Protection Clause. The Supreme Court has recognized in a leading case dealing with the application of the Equal Protection Clause that:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect. If the classification has some "reasonable

> basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369 (1911). "The problems of government are practical ones and may justify, if they do not require, rough accommodations - illogical, it may be, and unscientific." *Metropolis Theater Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S.Ct. 441, 443, 57 L.Ed. 730 (1913). "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U.S. 420, 426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393 (1961).

Starns v. Malkerson, 326 F.Supp., 234, 239 (D.Minn 1970), aff'd, 401 U.S. 985 (1971), *citing Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d. 491 (1970); *see also Weinberger v. Salfi*, 422 U.S. 749, 770, 95 S.Ct. 2457, 2469, 45 L.Ed.2d 522 (1975).

In the case of *Martinez v. Bynum, supra,* ten years after the *Vlandis decision,* this Court reiterated that a state has a legitimate interest in promulgating preferred tuition rates for residents, and acknowledged that both before and after *Vlandis*, it affirmed decisions upholding one year domiciliary requirements, as elements of bona fide residence, where the domicile was required to be primarily as a permanent resident and not as a student. *Martinez, supra*, 461 U.S. at 325, 327 n.6, 103 S.Ct. at 1842 n.6. The Supreme Court in *Martinez* stated that in *Vlandis,* the Court

> fully recognized that a State has a legitimate interest in protecting and preserving . . . the right of its own bona fide residents to attend [its colleges and universities] on a preferential tuition basis. *Vlandis,*

> 412 U.S. at 452-453, 93 S.Ct. at 2236-37. This legitimate interest permits a State [to] establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

Martinez, supra, 461 U.S. at 327-28, 103 S.Ct. 1838 at 1842, quoting *Vlandis*, 412 U.S. at 452-453, 93 S.Ct. at 2236-37. In addition, the *Vlandis* decision turned on the fact that the Connecticut policy created a *permanent irrebuttable* presumption that completely foreclosed any reclassification whatsoever, which the Court found to be repugnant. *Vlandis, supra*, 412 U.S. at 446, 452, 93 S.Ct. at 2233, 2236. By contrast, the policy at issue creates no such presumption, but rather, offers the non-resident student many vehicles to use in overcoming the initial presumption. *Weaver v. Kelton*, 357 F.Supp. 1106, 1110-1111 (E.D. Tex. 1973).

Petitioner's claim that Texas' interest in classifying its students as residents or nonresidents for tuition purposes is small is both shocking and indicative of his not understanding that the legitimate state interest is not just to distinguish between residents and nonresidents, but to provide educational opportunities for its own residents on a preferential basis. *Petitioner's Brief, p. 61.* The State of Texas has far more students each year who seek to be admitted to the universities and colleges of the State as residents than nonresidents. It bears repeating that the fundamental principle at issue here is that the State has a legitimate interest in providing educational opportunities to its bonafide residents before extending such opportunities to nonresidents, who fail to establish their residency prior to enrolling in the universities. *Vlandis*, 93 S.Ct. at 2236-37.

Petitioner argues that the state's policy bears no rational relationship to a legitimate state purpose in light of the indicia of domicile enumerated in *Vlandis*. *Petitioner's Brief at pp. 32-42.* In view of the cases the Court has affirmed following *Vlandis*[4], and the Court's acknowledgment of their validity[5], it appears that any such enumeration was intended only to serve as an example in comparison to the statute that was then being considered. In the present case, the state's reclassification policy allows non-resident students in public institutions of higher education to overcome a rebuttable presumption of non-residence, for tuition purposes, and is rationally related to the state's interest in protecting and preserving the right of its residents to attend such institutions. Upon this basis, the policy withstands the minimum level of judicial scrutiny in Equal Protection jurisprudence. The Court of Appeals held that the "factors set forth in the reclassification statute create a test of bona fide residency for the purpose of resident tuition status." Court of Appeals Opinion, at 11.

B. Strict scrutiny is inapplicable.

1. No fundamental right or suspect class is affected.

Strict judicial scrutiny is inapplicable to the case at bar, since it does not affect the exercise of a "fundamental right," or differentiate a "suspect class," such as race. *San Antonio I.S.D. v. Rodriguez*, 411 U.S. 1, 16, 93 S.Ct. 1278, 1287, 36 L.Ed.2d 16 (1973). Nonresident college graduate students are not claimed to be, nor are they a suspect class. *See generally, McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964) (race held to be "suspect" classification); *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944) (national origin held

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[4] *Sturgis, supra*, 368 F.Supp. at 39 n.1.; *Memorial Hospital, supra*, 415 U.S. at 259-60, 94 S.Ct. at 1082-1083.

[5] *Martinez, supra*, 461 U.S. at 327 n.6, 103 S.Ct. at 1842 n.6.

"suspect" classification). *Samuel v. University of Pittsburg*, 375 F. Supp. 1119, 1123 (W.D. Pa. 1974) (held sex was not a suspect classification) [rev'd on other grounds and remanded for more adequate relief], 538 F.2d 991 (3rd Cir. 1976). Nor is the attainment of higher education a fundamental right. *See, San Antonio School District v. Rodriguez*, 93 S.Ct., at 1297. Thus, in order to invoke strict scrutiny review, Petitioner attacks the Texas statute on the grounds that it is a restriction on the right to travel, which, in circumstances distinguishable from the instant action, does trigger strict scrutiny review. *See generally, Shapiro v. Thompson*, 394 U.S. 613, 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

In each instance where the Supreme Court initially permitted strict scrutiny review regarding the right to travel, the penalty on the right to travel was only found where the disparate treatment for newly-arrived "residents" also involved either a fundamental right (the right to vote), such as in the *Dunn* case, or basic necessities of life (food, clothing, shelter, medical care), such as in the *Shapiro* line of cases. Post-graduate education does not involve any of these interests.

When confronted with residency requirements for purposes of tuition costs at public universities, state and federal courts, including the Supreme Court, have determined that such requirements have no significant adverse effect on the right to travel. *See e.g., Shapiro* at 638 n.21, 1333 n.21 (residence requirements regarding tuition do not necessarily penalize the right to travel); *Vlandis v. Kline*, 412 U.S. 441, 452, 93 S.Ct. 2230, 2236 (1973) (state should not be denied the right to impose reasonable residency requirement upon students due to special problem of characteristically transient nature); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 258-259, 94 S.Ct. 1076,

1082 (1974) (declining to strike down residence requirements as a condition to lower tuition at state universities); *Starns v. Malkerson*, 326 F.Supp. 234, 238 (D.Minn 1970), *aff'd*, 401 U.S. 985 (1971) (student residency requirement for tuition purposes does not infringe upon fundamental right and strict scrutiny test inapplicable); *Sturgis v. State of Washington*, 368 F.Supp. 38, 39, n.1 (W.D. Wash. 1973), *aff'd*, 414 U.S. 1057 (1973) (residency requirement for tuition purposes, scrutinized under rational basis test, bore reasonable relationship to legitimate state purpose).

Thus, once it is alleged that the constitutional right to travel has been impeded, strict scrutiny will be applied only if denial of that right affects a basic necessity or fundamental right. This is supported by the Court's recognition in *Maricopa County*, that some durational residence requirements might not substantially penalize the right to travel to the extent necessary to invoke strict scrutiny. *Maricopa County*, 415 U.S. at 258-259. The Court has pointed out in a footnote that tuition residence requirements do not deny students the basic necessities of life. *Id.*, 415 U.S. at 260, n. 15. The Court cites *Starns v. Malkerson*, 326 F.Supp. 234, 238 (D.Minn.1970), aff'd, 401 U.S. 985 (1971), which quoted with approval from *Kirk v. Board of Regents*, 273 Cal.App.2d 430 (1969), appeal dismissed, 396 U.S. 554 (1970) (emphasis added):

> 'While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro involved the immediate and pressing need for preservation of life and health* of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly

> financed institutions of higher learning [does] not involve similar risks. Nor was petitioner ... precluded from the benefit of obtaining higher education. Charging higher tuition fees to nonresident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents.'
>
> See also Note, The Constitutionality of Non-resident Tuition, 55 Minn.L.Rev. 1139, 1149-1158 (1971). Moreover, in *Vlandis, supra,* the Court observed that "special problems [are] involved in determining the bona fide residence of college students who come from out of State to attend [a] public university ...," since those students are characteristically transient, 412 U.S., at 452, 93 S.Ct., at 2236.

Maricopa County, 415 U.S. at 260 n.15. The Court, thus, explicitly stated that which it had foreshadowed in *Shapiro*, that is, that tuition residence requirements do not, in and of themselves, constitute a penalty on interstate travel. By summarily affirming the decision of the federal district court in *Starns v. Malkerson*, the Supreme Court has approved a lower court's refusal to apply a strict scrutiny review in a residence tuition case. In applying the rational basis standard of scrutiny, the Court held that the regulatory classification was reasonably related to a legitimate objective of the State of Minnesota. The Supreme Court reaffirmed this important point in *Vlandis v. Kline*, 412 U.S. 441 (1973), in which the Court opined:

> [A] State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institution on a preferential tuition basis.

Vlandis v. Kline, 412 U.S. 441, 452-458 (1973).

2. The Court of Appeals opinion does not conflict with the opinion of other courts, nor the cases require strict scrunity in this case.

As noted in the Court of Appeals Opinion, the Court has also permitted strict scrutiny review in more recent "right to travel" cases where statutes have created permanent distinctions among admittedly bona fide residents of a state based on the length or timing of their residence in the state. The cases which Petitioner cites are distinguishable, and Petitioner's reliance on these cases is flawed. Many of the cases differ from the Texas statute because they distinguish between residents, whereas the Texas statute distinguishes between residents and nonresidents.

a. Zobel v. Williams

In *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982), the Supreme Court merely struck down the statute without deciding what level of scrutiny should be applied because the statute failed to meet even the minimum rationality test. *Id.* at 60-61. The Alaska statute created permanent distinctions between classes of bona fide residents based on the length of residence in the state. *Id.* at 59. The facts in *Zobel* differ from residence requirements for tuition purposes in that the Alaska statute discriminated retrospectively between classes of admittedly bona fide residents, and thus the facts in *Zobel* do not support an extension of its logic to durational residence requirements for the purposes of tuition.

In *Zobel*, a law that distinguished persons who were already residents, one from the other, by distributing funds from oil proceeds of the state to its residents based on the length of time each had been a resident was held unconstitutional because it failed to satisfy even a rational basis test. In explaining *Starns* in a footnote, the Court stated

that *Starns* "cannot be read as a contrary decision of this Court." *Zobel,* 102 S.Ct. at 2315, n. 13. Thus, the Court did not disapprove of the holding that may classify students on the basis of residence for tuition purposes. It only stated that the durational requirement approved of in *Starns* was to be viewed as a test of bona fide residency. *Zobel*, 457 U.S. at 64, 102 S.Ct. at 2315, fn. 13. The implicit approval in *Zobel* of charging nonresidents a higher rate of tuition is justifiable. States have a legitimate interest in maintaining the quality of their universities and providing greater educational opportunities for their legitimate residents. *Vlandis,* 93 S.Ct. at 2236, 2237.

b. Martinez v. Bynum

In *Martinez v. Bynum*, 461 U.S. 321, 103 S.Ct. 1838, 75 L.Ed.2d 879 (1983), the Supreme Court upheld a Texas Education Code provision which denied tuition-free admission to the Texas public schools to a minor who lived apart from a parent or guardian if his presence in the school district was for the primary purpose of attending free public schools. Roberto Morales, a young child born in the United States and thus a United States citizen by birth, lived with his sister for the primary purpose of attending school. Because he did not reside with his parents or guardian in the school district, and because he was in Texas for the primary purpose of attending school, the statute denied Morales tuition-free admission to the Texas schools. The Court upheld the Texas statute, finding that such a requirement furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by its residents. *Id.* at 328. The Court opined that a bona fide residence requirement does not burden the constitutional right to travel because a person is free to move to a state and establish residence there. *Id.* at 328-29. Similarly, Texas' residence requirement for higher education tuition purposes does not

recognize as a "resident" a student who moves to Texas for the primary purpose of attending a Texas university.

The *Martinez* court found that the Texas statute met the "domiciliary" test because while the statute compelled a school district to permit a child to attend school tuition-free if he had a bona fide intention to remain indefinitely (that is, if he had a reason for being there other than his desire to attend school) the statute went even further and allowed some children to attend school even if they did not intend to remain in the school district indefinitely. Similarly, the Texas Higher Education Coordinating Board has provided numerous exceptions which qualify out-of-state students to receive residence status for tuition purposes.

c. Hooper v. Bernanillo County Assessor

In *Hooper v. Bernanillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985), the Supreme Court found "that the New Mexico statute suffers from the same constitutional flaw as the Alaska statute in *Zobel*," *Id., at 2868,* which used length of state residence to distinguish between persons who were already bona fide residents of New Mexico, not between persons who were residents and nonresidents. The *Hooper* Court made it clear that the "State may not favor established residents over new residents." *Id.* Petitioner's reliance on *Hooper* and *Zobel* is misplaced in that the instant cause of action contests distinctions between residents and non-residents, while the classifications in *Hooper* and *Zobel* were between residents only. Petitioner never established residency in the State of Texas prior to enrolling in school.

d. Attorney General of New York v. Soto-Lopez

In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986), the Court

once again applied the penalty analysis, where a statute created classifications between persons who were already residents. The statute reviewed in *Soto* offered preferential civil service employment to veterans who were residents prior to serving in the military (thus, preferential treatment to one class of residents over other residents). This case is distinguishable from the instant cause of action as *Soto* represents disallowing the classifications of persons who were all residents of the state by favoring residents "at a past fixed point over those who were not New York residents at the same point in their lives." *Id.*, at 905.

The Court has yet to recognize that classification of students as either resident or non-resident for tuition purposes infringes upon the right to travel. In fact, since *Shapiro*, where the Court held the law need only penalize the exercise of the right to travel for it to be unconstitutional, the Court has twice had the opportunity to invalidate laws requiring non-residents to pay higher tuition rates and has declined to do so. In both cases, the Court has affirmed without opinion the lower courts' approval of the laws. *Starns*, 326 F.Supp. 234 (D.Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971); *Sturgis*, 368 F.Supp. 38 1973, *aff'd mem.*, 414 U.S. 1057 (1973).

e. Starns v. Malkerson

In *Starns v. Malkerson*, 326 F.Supp. 234 (D. Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971), the district court found, and the Supreme Court affirmed, that higher tuition rates for nonresidents did not in fact deter travel, noting that 6,000 of the 50,000 students enrolled in the university were nonresidents. *Id.* at 238. It also held that the one-year waiting period before new residents could be entitled to the in-state tuition rates would not prevent "any appreciable number of persons from moving into the state." *Id.* at 237-238.

f. Sturgis v. State of Washington

The Supreme Court again affirmed a law virtually identical to the one challenged in *Starns*. *Sturgis v. State of Washington*, 368 F.Supp. 38 (1973), *aff'd mem.*, 414 U.S. 1057 (1973). The district court in *Sturgis* also looked to the large number of nonresidents attending the university to show that the higher tuition rates for nonresidents did not deter travel. In this case 5,913 of 34,125 students were nonresidents. *Id.* at 40.

g. Weaver v. Kelton

In *Weaver v. Kelton*, 357 F.Supp. 1106 (E.D. Tex., 1973) the court specifically stated that strict scrutiny was not implicated because the court distinguished the right to travel regarding the basic necessities of life and the right to travel related to obtaining an education, and the court further refused to recognize the right to equal access to an education as a fundamental right. *Id.*, at 1109, 1110. Petitioner's reliance on the *Weaver* language to compare his situation with the *Robertson*[6] and *Covell*[7] cases is misplaced, in that the *Weaver* court distinguished the statutes at issue in the *Robertson* and *Covell* cases from the Texas statutes at issue:

> however, the Texas statutes are easily distinguishable in that they make allowance for future reclassification of nonresidents after they have overcome the presumptions set out in the statutes.

Weaver v Kelton, 357 F.Supp. 1106, at 1111.

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[6] *Robertson v. University of New Mexico*, 350 F.Supp. 100 (D.N.M. 1972).

[7] *Covell v. Douglas*, 501 P.2d 1047 (Colo. 1972).

h. Kelm v. Carlson

Kelm v. Carlson, 473 F.2d 1267 (6th Cir., 1973) is distinguishable in that the requirement in the statute in *Kelm* that the nonresident prove future employment after graduation in the State of Ohio, was beyond the control of the applicant. *Id.*, at 1271. This requirement is not analogous to the reasonable factors in the Texas statute. The Sixth Circuit stated:

> As we have indicated, we recognize that Ohio and its universities have a right to charge different fees to out-of-state residents than to its own citizens. We also recognize that it is neither arbitrary nor unreasonable for it to place a strong burden of proof as to change of residence on a former out-of-state student who claims Ohio residency lest such claim be founded only upon the student's desire to escape the tuition surcharge.

Id., p. 1271 (emphasis added). Likewise, Texas and its universities have a right to charge different fees to out-of-state residents who fail to establish their residency in Texas.

C. The statute should not be reviewed under intermediate scrutiny.

The middle tier of judicial scrutiny is reserved for instances where state legislation has infringed upon an important (yet not fundamental) right, or has created a sensitive (yet not suspect) classification. *Plyler v. Doe*, 457 U.S. 202, 223-224, 102 S.Ct. 2382, 2398, 72 L.Ed.2d 786 (1982). "Important" rights or interests, for Equal Protection analysis, are those rights or interests which tend to disempower a particular group. The creation of a permanent underclass is the harm that is specifically guarded against. *See, e.g., City of Cleburne v. Cleburne Living Center*, 473

U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (shelter); *Plyler v. Doe*, 457 U.S. 202 (1982) (elementary education); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (9174) (medical services); *United States Department of Agriculture v. Murray*, 413 U.S. 508 (1973) (food); and *Shapiro v. Thompson*, 394 U.S. 618 (1969) (welfare benefits).

"Sensitive" classes, for Equal Protection analysis, have generally been those that are based on personal, immutable characteristics. *See, e.g., Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982) (gender); *Milles v. Hablvetzel*, 456 U.S. 91, 102 S.Ct. 1549, 71 L.Ed.2d 770 (1982) (illegitimacy); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (mental retardation); *Graham v. Rochondosa*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971) (alienage). The status of a nonresident graduate student is not personal, as there are no personal characteristics that can be identified for discrimination purposes. Nor is the status immutable, that is, non-changeable, because a person may change his residence. The Court's reasoning in denying "quasi-suspect" or "sensitive" status aptly applies to nonresident graduate students: "...as a historical matter, [members of the class] have not been subjected to discrimination; they do not exhibit obvious immutable, or distinguishing characteristics that define them as a discrete group; and they are not a minority or politically powerless." *Lyng v. Castillo*, 477 U.S. 635, 638, 106 S.Ct. 2727, 2729, 91 L.Ed.2d 527 (1986).

Laws affecting the attainment of higher education have not been categorized by the Supreme Court as infringing on "important" rights. *Rodriguez, supra*, 411 U.S. at 35, 93 S.Ct. at 1297 (education is not among the rights afforded explicit protection under the U.S. Constitution); nor can it be said that non-resident university students display the traditional characteristics of a "quasi-suspect" class. *See, Lyng, supra*, 477 U.S. at 638, 106 S.Ct. at 2729.

Graduate students as well as undergraduate students are not an underclass, nor will they be made so by a law affecting the privilege of obtaining further education. It would be clearly erroneous to apply a "mid-tier" or "intermediate" level analysis to an equal protection challenge involving alleged disparate treatment in obtaining a cheaper post-graduate education. The educational privilege involved here is simply not an "important" right involving a "sensitive" class of persons. Therefore, even a heightened scrutiny analysis of the state's reclassification policy is inappropriate.

Even if such scrutiny is applied, however, the state's policy is substantially related to a legitimate governmental purpose of protecting and preserving the quality of its colleges and universities and the right of its own residents to attend such institutions on a preferential tuition basis and the right to impose on a student...a reasonable durational residency requirement. *Vlandis, supra*, 412 U.S. at 452-453, 93 S.Ct. at 2236-2237.

V. THIS COURT SHOULD DENY CERTIORARI BECAUSE THE SUBJECTIVE BELIEFS OF INDIVIDUALS, INCLUDING THE UNIVERSITY OFFICIALS, REGARDING THE DOMICILE OF PETITIONER ARE IRRELEVANT TO THE DECISION REGARDING HIS RECLASSIFICATION AS A RESIDENT.

Petitioner relies heavily on the subjective beliefs of different University officials in his attempt to show that these individuals should have known that he would stay in Texas post graduation. It is noteworthy that the statutes and the rules and regulations provide several exceptions to nonresident status, but that they do not provide for the subjective beliefs of university officials as a basis for determining the eligibility of an applicant to be reclassified. Thus, regardless of what the individuals may have thought, felt or believed personally regarding Petitioner's intent to stay in Texas after his graduation, those individual

beliefs are irrelevant to the decision regarding the constitutionality of the statute. Petitioner failed to provide sufficient objective facts to show that he was a Texas resident. The facts that Petitioner came to Texas to study law, that he arrived in Texas only two weeks prior to enrolling in the School of Law at the University, and thus had not established his residency in Texas for the purpose of determining his resident status for tuition purposes are as equally consistent with a nonresident student's intent to leave Texas, as they are with a nonresident student who remains in Texas post graduation.

VI. THIS COURT SHOULD DENY CERTIORARI BECAUSE THE STATISTICAL DATA UPON WHICH PETITIONER RELIES IS AN INVALID BASIS FOR REVIEWING THE CONSTITUTIONALITY OF THE STATUTE, AND SAID DATA IS INAPPLICABLE TO THE INSTANT CAUSE OF ACTION.

A. Since there is no fundamental right affected, the statistical data relating to nonresident students is irrelevant and inapplicable.

Petitioner relies greatly on the expert testimony of Ralph Brown and Dennis Johnson to prove that higher nonresident tuition rates will have a detrimental impact on interstate migration. Doctors Brown and Johnson conducted a study in South Dakota and neighboring states *(See Appendix K to Petition for Writ of Certiorari)* which indicated that as nonresident tuition increases, nonresident enrollment decreases. Since there is no fundamental right implicated in this cause of action, supra, including the right to travel, said statistical data is inapplicable and irrelevant.

B. The statistical data is further irrelevant, since it relates to factually dissimilar demographics to the cause of action at bar.

Further, the study cited by Petitioner relates to a sampling of undergraduate student populations, as opposed to graduate students such as Petitioner. The study cited

bears no relation to any alleged impact on enrollment in post-graduate programs (such as the law program at the University of Houston) wherein demand for graduate enrollment is less sensitive to price fluctuations than undergraduate enrollment. The study was also conducted in South Dakota and neighboring states, whose population base is generally different from that of the urban population base, such as that of Houston which ranks among the top ten cities in the United States, in terms of population. *Appendix K to Petition for Writ of Certiorari.* The goals, objectives, intents and purposes of academia and education would vary significantly in the educational environment and framework in these two population bases. The types of students and their related academic interests vary differently according to the location; thus, the study may be significantly flawed as to urban areas, such as Houston. Such differences would reflect different results in a study such as the one cited by Petitioner if conducted at the University of Houston, particularly as it relates to a graduate professional program, such as law. Petitioner bases his argument primarily on statistical evidence applied previously to undergraduate programs in the Midwest. As shown supra, there is no sound basis in prior case law to apply strict scrutiny of the statutes in this case, on the basis of the study cited by Petitioner.

CONCLUSION

Respondents respectfully request that this Court deny Petitioner's Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA A. HAMILTON
Deputy Attorney General for Litigation

TONI HUNTER
Chief, General Litigation Division

JANICE S. MOSS
Texas Bar No. 14586050
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
COUNSEL FOR RESPONDENTS

APPENDIX A -- EXCERPTS OF STATUTES INVOLVED

(1) *United States Constitution, Amendment XIV, Section 1*:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

(2) *Texas Education Code Annotated §54.052(a)(1)(2)*(Vernon 1987):

In this subchapter:

(1) "Residence" means "domicile."
(2) "Resided in" means "domiciled in."

(3) *Texas Education Code Annotated. §54.052(f)* (Vernon 1987):

An individual who is 18 years or over who resides out of the state or who has come from outside Texas and who registers in an educational institution before having resided in Texas for a 12-month period shall be classified as a nonresident student.

(4) *Texas Education Code Annotated §54.053*(Vernon 1987):

The governing board of each institution required by this chapter to charge a nonresident tuition or registration fee is subject to the rules, regulations, and interpretations issued by the Coordinating Board, Texas College and University System, for the administration of the nonresident tuition provisions of this subchapter....

(5) *Texas Education Code Annotated §54.054* (Vernon 1987):

A nonresident student classification is presumed to be correct as long as the residence of the individual in the state is primarily for the purpose of attending an educational institution. After residing in Texas for at least twelve (12) months, a nonresident may be reclassified as a resident student as provided in the rules and regulations adopted by the Coordinating Board, Texas College and University System. Any individual reclassified as a resident student is entitled to pay the tuition fee for a resident of Texas at any subsequent registration as long as he continues to maintain his legal residence in Texas.....

(6) *19 Texas Administrative Code §21.23* (West 1994):

Reclassification. Persons classified as nonresident students upon first enrollment in an institution of higher education are presumed to be nonresidents for the period during which they continue as students. If such nonresident students withdraw from school and reside in the state while gainfully employed for a period of 12 months, upon re-entry into an institution of higher education they will be entitled to be reclassified as residents for tuition purposes. Accumulations of summer and other vacation periods do not satisfy this requirement. Reclassification to resident status after residing in the state for 12 months cannot be based solely upon the student's or the student's spouse's employment, registration to vote, registration of a motor vehicle and payment of personal property taxes thereon, or the securing of a Texas driver's license. The presumption of "nonresident" is not a conclusive presumption, however, and other facts may be considered to determine if the presumption has been overcome. Material to this determination are business or personal facts or actions unequivocally indicative of a fixed intention to reside permanently in the state. Such facts may include, but are not limited to, the length of residence and

full-time employment prior to enrolling in the institution, the fact of full-time employment and the nature of such employment while a student, purchase of a homestead with substantial down payment, or dependency upon a parent or guardian who has resided in Texas for at least 12 months immediately preceding the student's enrollment. All of these facts are weighed in the light of the fact that a student's residence while in school is primarily for the purpose of education and not to establish residence, and that decisions of an individual as to residence are generally made after the completion of an education and not before. Students classified as nonresident students shall be considered to retain that status until they make written application for reclassification in the form prescribed by the institution and are officially reclassified in writing as residents of Texas by the proper administrative officers of the institution. Application for reclassification must be submitted prior to the official census date of the relevant term.